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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,181	12/15/2003	Nathalie Mougin	05725.1303-00	2162
22852	7590	03/09/2010		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT	PAPER NUMBER
			1619	
			MAIL DATE	DELIVERY MODE
			03/09/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/734,181

**Applicant(s)**

MOUGIN, NATHALIE

**Examiner**

JYOTHSNA A. VENKAT

**Art Unit**

1619

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23, 33-35, 40, 46, 63-65, 80-86, 90 and 91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 33-35, 40, 46, 63-65 and 80-86 and 90-91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Receipt is acknowledged of amendment, remarks and terminal disclaimer filed on 12/16/09. Claims 27, 32, 38-39 and 79 have been cancelled as per applicants' amendment dated 12/16/09.

#### **Status of claims**

Claims **24-32, 36-39 and 79 are cancelled**. Claims 87-89 and 92-93 are withdrawn from consideration as being drawn to **non- elected invention** (election with traverse dated 5/23/07) and claims 41-45, 47-62, 66-78 are withdrawn from consideration as being drawn to **non-elected species**(election with traverse dated 5/23/07).

Claims 1-23, 33-35, 40, 46, 63-65 and 80-86 and 90-91 are currently examined in the application.

In view of the amendment, the rejection of claims 1-23, 33-35, 40, 46, 63-65 and 80-86 and 90-91 under 35 U. S. C. first paragraph is hereby withdrawn.

#### ***Double Patenting***

Claims 1-23, 33-35, 40, 46, 63-65 and 80-86 and 90-91 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14, 21-26, 29-30, 37, 54-56, 70-83 and 89 of copending Application No. 10/734,301 (**now allowed and the record did not show any patent number assigned to this application** ). Although the conflicting claims are not identical, they are not patentably distinct from each other because the hair cosmetic composition claiming hair gradient copolymer drawn to the elected species is also claimed in the co-pending application. Co-pending application , is claiming

cosmetic composition comprising gradient copolymer comprising at least two monomeric residues and also claiming additional monomeric residue and this includes styrene.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*This rejection is maintained. The terminal disclaimer submitted on 12/19/09 is disapproved since the person who signed the terminal disclaimer does not have power of attorney, and thus, is not of record.*

**The following is suggested to place this application in condition for allowance. If applicants' submit claims by complying with the enumerated reasons, only those claims will be entered. If applicants' are not willing to cancel the non-elected species and if the TD is proper, then the examiner will continue to examine another species.**

1. Limiting claim 1 to the elected species by specifying after each monomer residue the elected species and deleting "at least one" before the film forming gradient copolymer ( at all occurrences).

2. Amending claims 2-4 and 14-19 by deleting "at least one" before the film forming gradient copolymer and also amending claims so that the limitations claimed in claims 2-19 meet the elected species.

3. Cancel claim 20.

4. Cancel claims 33-35 since claim 1 is drawn to copolymer.

5. Cancel all the withdrawn claims drawn to non-elected invention and species.

6. Submit terminal disclaimer signed by attorney of record.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619